

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Toledo Edison)
Company, and The Cleveland Electric) Case No. 20-50-EL-ATA
Illuminating Company for Approval of)
Time-Varying Rates.)

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where FirstEnergy seeks approval of voluntary time-of-use rates for residential standard service offer customers.¹ OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion are further set forth in the attached memorandum in support.

Respectfully submitted,

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Ohio Consumers' Counsel

/s/ Christopher Healey
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¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

As part of its recently-approved charges to customers for grid modernization, FirstEnergy is required to offer time-varying rates to standard service offer customers as one way to achieve the promised benefits of grid modernization.² OCC has authority under law to represent the interests of all the 1.9 million residential utility customers of FirstEnergy under R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where FirstEnergy is offering a new form of rates to residential customers, which could affect the amount that customers pay should they opt for these new rates. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;

² See Case No. 17-2436-EL-UNC, Opinion & Order ¶ 38 (under approved settlement, FirstEnergy must “propose a time-varying rate offering for non-shopping customers, which will be designed to achieve the energy and capacity savings detailed in the cost-benefit analysis”).

- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential customers of FirstEnergy which involves voluntary time-of-use rates for residential customers. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of shareholders.

Second, OCC's advocacy for residential customers could include, among other things, advancing the position that time-varying rates should be optional for consumers and should be designed in a way that protects customers from unjust and unreasonable bills while maximizing the benefits to customers from the grid modernization investments they are paying for. OCC's position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where FirstEnergy is proposing new rates for residential standard service offer customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B), which OCC already has addressed and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider “The extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.³

³ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
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Ambrosia E. Logsdon (0096598)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission, this 28th day of January 2020.

/s/ Christopher Healey

Christopher Healey
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/28/2020 4:09:00 PM

in

Case No(s). 20-0050-EL-ATA

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.